

## EXHIBIT E

McDowell vs. Lansing

12 CV 5025

Deposition of: Michael Erasmo Rodriguez

Taken on: March 04, 2013

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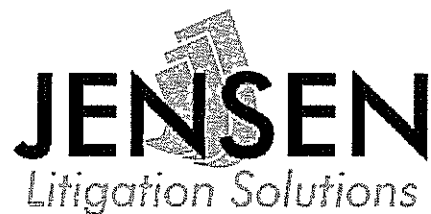
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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MARLO McDOWELL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 12 CV 05025
	)	
VILLAGE OF LANSING and OFFICER	)	
MICHAEL RODRIGUEZ,	)	
	)	
Defendants.	)	

The deposition of MICHAEL ERASMO RODRIGUEZ,  
called by the Plaintiff for examination, taken pursuant  
to notice and pursuant to the Federal Rules of Civil  
Procedure for the United States District Courts  
pertaining to the taking of depositions, taken before  
Kathy J. Szotek, Certified Shorthand Reporter and Notary  
Public, at 53 West Jackson Boulevard, Suite 252,  
Chicago, Illinois, commencing at 1:19 p.m. on  
March 4, 2013.

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1 APPEARANCES.

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9 On behalf of the Plaintiff;

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17 On behalf of the Defendants

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3 MICHAEL ERASMO RODRIGUEZ

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1 (Witness sworn.)

2 WHEREUPON:

3 MICHAEL ERASMO RODRIGUEZ,

4 called as a witness herein, having been first duly

5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FOUTRIS:

8 Q. Could you please state your full name for the

9 record, please.

10 A. Michael Erasmo Rodriguez.

11 Q. Could you spell that for the court reporter,

12 please.

13 A. M I C H A E L, E R A S M O, R O D R I G U E Z.

14 Q. You're currently employed as a Lansing police

15 officer?

16 A. Yes.

17 Q. Let me give you some quick ground rules for a

18 deposition. First, you need to give me all verbal

19 answers. Do you understand that?

20 A. Yes.

21 Q. You need to wait until a question is fully

22 asked before you respond. Do you understand that?

23 A. Yes.

24 Q. And if there's a question that's asked that

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1 you do not understand, you need to tell me. Okay?

2 A. Okay.

3 Q. When did you start working for Lansing?

4 A. July of 2007.

5 Q. And I see that you graduated from Illinois

6 State University in 2006; is that correct?

7 A. Yes.

8 Q. And what did you do work wise from 2006

9 until -- graduating college in 2006 until you started

10 working with Lansing?

11 A. I worked briefly at Apple.

12 Q. Doing what?

13 A. I was like a tech support for the iPhone. I

14 was only in training there for about a week before I

15 left, is when I got the call to be a police officer.

16 Q. Did you ever work for any other law

17 enforcement agencies?

18 A. No.

19 Q. And do you have any relatives who work for law

20 enforcement?

21 A. None that I can think of. I think there might

22 be a cousin or something or an uncle, but I'm not sure.

23 Q. Okay. And have you ever been in the military?

24 A. No.

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1 Q. You've been sued at least once before in  
2 connection with your duties as a Lansing police officer;  
3 is that correct?  
4 A. Yes.  
5 Q. And that was the case of Epting versus  
6 Lansing, et al., E P T I N G; is that right?  
7 A. Yes.  
8 Q. And you stated here that you were an ancillary  
9 defendant in that case; is that right?  
10 A. I believe so, yes.  
11 Q. What did you mean by that exactly; what were  
12 the allegations in the case?  
13 A. The subject was arrested, he was refusing to  
14 be placed in the squad car, and one of my coworkers  
15 tased him to get him -- to gain compliance and he was  
16 suing for that.  
17 Q. And you were present at the time that he was  
18 tased?  
19 A. I was present.  
20 Q. Have you had any other lawsuits since you've  
21 answered your interrogatories?  
22 A. No.  
23 MR. FOURTRIS: Let me just mark this as an exhibit  
24 real quick.

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1 (Rodriguez Deposition Exhibit No. 1  
2 marked as requested.)  
3 BY MR. FOURTRIS:  
4 Q. You've been handed Exhibit No. 1, which is a  
5 10-page document. It's the answer -- defendant's  
6 answers to interrogatories. Do you recognize what's in  
7 front of you, sir?  
8 A. Yes.  
9 Q. And does your signature appear on the  
10 second-to-last page?  
11 A. Yes.  
12 Q. Okay. And then I'll just --  
13 MR. MATHEWS: Just so you know, I have E-mailed  
14 that to you.  
15 MR. FOURTRIS: Okay.  
16 BY MR. FOURTRIS:  
17 Q. All right. So just before the deposition  
18 began, Officer, I was informed that there may be an  
19 amended answer which actually has a change to one answer  
20 to this set of interrogatories; is that right?  
21 A. Yes.  
22 Q. That would be the answer to Question No. 11  
23 regarding complaints of alleged police misconduct; is  
24 that correct?

Page 8

1 A. Yes.  
2 Q. Okay. Aside from that question which was  
3 unanswered, this document before you, these answers to  
4 interrogatories, are the rest of these true and accurate  
5 to the best of your knowledge? And you can take the  
6 time to look at them.  
7 A. Yeah. I know there was -- This says 2002 to  
8 the present, and I worked for a clothing store as a  
9 part-time employee.  
10 Q. What --  
11 A. For No. 2.  
12 Q. Oh, answer to No. 2?  
13 A. Yeah. And for No. 6, I'm now a detective to  
14 be added to that.  
15 Q. Okay. Anything else?  
16 A. I don't believe so.  
17 Q. All right. So in answer to No. 11, have you  
18 had any complaints alleging police misconduct filed  
19 against you?  
20 A. Yes.  
21 Q. How many?  
22 A. One that I can think of specifically.  
23 Q. When was that and what was the nature of the  
24 allegations?

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1 A. I believe it was in 2011, and a subject was  
2 unhappy with her arrest and she made complaints and went  
3 to the police department.  
4 Q. You specifically?  
5 A. I was named on there, yeah. I was the  
6 arresting officer.  
7 Q. Was she claiming that it was a false arrest or  
8 that there was something else involved?  
9 A. Yeah, it was something like that. I'm trying  
10 to think of exactly how she had it.  
11 Q. But what happened; was the complaint  
12 sustained, not sustained?  
13 A. It was unfounded.  
14 Q. Unfounded?  
15 A. Yes, I think that's the word.  
16 Q. Okay. And any other complaints of misconduct  
17 that you can think of?  
18 A. No.  
19 Q. Have you been disciplined at all in connection  
20 with your duties as a Lansing police officer?  
21 A. I received a written reprimand once.  
22 Q. What was that for?  
23 A. I allowed a subject to be placed into a cell  
24 with their belt on.

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1 Q. Okay. Anything else?  
2 A. No other reprimands.  
3 Q. Okay. And so your assignments in the police  
4 department have been patrol officer and detective and  
5 FTO; is that right?  
6 A. Yes, I am an FTO, although I have never -- I  
7 did like one partial training one time, but I was never  
8 officially training a new employee; but I am an FTO.  
9 Q. All right. And when you became a detective,  
10 did you go through additional training?  
11 A. Yes.  
12 Q. And was that through Reid or something  
13 different?  
14 A. I did a Reid class.  
15 Q. Okay. And are you a part of any MEG units?  
16 A. MEG?  
17 Q. MEG, M E G, metropolitan enforcement groups.  
18 A. No.  
19 Q. Have you ever been loaned out to any agencies,  
20 like the DEA or the ATF?  
21 A. No.  
22 Q. Prior to June 25th, 2011, to your knowledge  
23 had you ever interacted with Marlo McDowell?  
24 A. No.

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1 Q. How about Noelle Folden, Richard Birkenfeld,  
2 Donald Birkenfeld, Ricky Ramirez, or Stephen Morandi?  
3 A. No.  
4 Q. After June 25, 2011, did you interact with any  
5 of those people outside of any court proceedings that  
6 you know of?  
7 A. No.  
8 Q. And what do you know about the plaintiff's  
9 claims of injuries in this case?  
10 A. I think I heard he sustained an injury to his  
11 jaw.  
12 Q. Okay. Do you have any other specific  
13 information about that or just generally that he  
14 sustained an injury to his jaw?  
15 A. I believe I heard it was a broken jaw, but  
16 officially I haven't heard or I haven't seen any  
17 documents or anything like that. I think somebody told  
18 me that.  
19 Q. What did you do to prepare for today's  
20 deposition?  
21 A. Spoke to my attorney.  
22 Q. Did you review any documents?  
23 A. These (indicating).  
24 Q. Just the answers to interrogatories?

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1 A. I think I reviewed a little bit of the Cook  
2 County case report.  
3 MR. FOURTRIS: Let me just mark three sets of  
4 exhibits.  
5 (Rodriguez Deposition Exhibit  
6 Nos. 2-4 marked as requested.)  
7 BY MR. FOURTRIS:  
8 Q. Officer, you've been handed three sets of  
9 exhibits. Let me identify them for the record. Exhibit  
10 No. 1 is an incident report from the Cook County  
11 Sheriff's Department. It's Bates-stamped D1 and 2. Do  
12 you have that in front of you?  
13 MR. MATHEWS: You mean Exhibit 2?  
14 MR. FOURTRIS: That's what I meant. Thank you.  
15 BY THE WITNESS:  
16 A. Yes.  
17 Q. Exhibit No. 3 is another offense, slash,  
18 incident report from the Cook County Sheriff's  
19 Department. This is Bates-stamped D3 and 4. Do you  
20 have that in front of you as well?  
21 A. Exhibit 3, yes.  
22 Q. Okay. And then Exhibit No. 4 is an incident  
23 report from Lansing. This is Bates-stamped D5 and 6.  
24 Do you have that in front of you, sir?

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1 A. Yes.  
2 Q. Okay. All right. Now, which, if any, of  
3 these sets of documents in front of you did you review?  
4 I mean, they're so voluminous I'm sure you can't  
5 remember which ones.  
6 A. It was either one or both of these.  
7 Q. Okay. So you're talking about the Cook County  
8 Sheriff's Department?  
9 A. Yes.  
10 Q. How about the Lansing incident report?  
11 A. I think I've seen this too before.  
12 Q. Did you author any reports in connection with  
13 this incident?  
14 A. No.  
15 Q. And just to be clear for the record,  
16 Exhibits 3 and 4 -- or 2 and 3 I should say -- let me  
17 withdraw that.  
18 To be clear for the record, Exhibits 2 and 3,  
19 the Sheriff's Police Department incident reports, did  
20 you have anything to do with creating these documents?  
21 A. No.  
22 Q. And why is it that you did not prepare any  
23 kind of report with respect to this incident?  
24 A. The incident occurred outside of Lansing

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1 jurisdiction. It was turned over to Cook County. It  
2 was their jurisdiction. I was responding as an  
3 assisting officer to them.  
4 Q. Do you know who Cook County Sheriff's police  
5 deputy Sheriff Morgan is?  
6 A. You said Morgan?  
7 Q. Yeah, Morgan.  
8 A. No.  
9 Q. He's the one who authored these incident  
10 reports that you have in front of you.  
11 A. No.  
12 Q. It doesn't ring a bell?  
13 A. No.  
14 Q. Did you know by name any of the Sheriff's  
15 deputies that responded to the Bottoms Up?  
16 A. No.  
17 Q. Have you seen any of those deputy sheriffs  
18 since that date?  
19 A. I don't recall.  
20 Q. Okay. There were two prosecutions that  
21 stemmed from this incident. There was one of Stephen  
22 Morandi and there was one of Richard Birkenfeld. Were  
23 you aware of that?  
24 A. I testified, I believe, on Morandi's.

Page 15

1 Q. Do you know what happened as a result of that  
2 case?  
3 A. No, I don't know for a fact. I was just  
4 discussing that today. He might have been convicted,  
5 but I don't know for a fact.  
6 Q. All right. How about Richard Birkenfeld's  
7 case, do you know what happened with that case?  
8 A. No, I do not.  
9 Q. Were you ever contacted by the State's  
10 attorneys office in connection with that case?  
11 A. Not that I recall.  
12 Q. Okay. Do you recall what the plaintiff looked  
13 like on that date, race, height, weight, without looking  
14 at the reports in front of you?  
15 A. Who do you -- Who's the plaintiff?  
16 Q. Marlo McDowell.  
17 A. Mr. McDowell?  
18 Q. Yes.  
19 A. I recall that he's a male black subject.  
20 Q. Do you recall anything --  
21 A. Probably in his 20s.  
22 Q. I'm sorry. I didn't mean to interrupt. Could  
23 you please continue.  
24 A. I believe he's in his 20s.

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1 Q. Do you remember anything else about his  
2 appearance?  
3 A. I don't know for a fact. I think he has short  
4 hair.  
5 Q. On the date that you testified in the criminal  
6 case against Mr. Morandi, did you interact at all with  
7 Marlo McDowell?  
8 A. I don't believe so, no.  
9 Q. Did you see him?  
10 A. I believe I saw him at the trial.  
11 Q. Where did you see him?  
12 A. In the courtroom.  
13 Q. Was this while you were testifying?  
14 A. I believe so. I believe I remember seeing him  
15 there while I was testifying.  
16 Q. Listening to what you were saying?  
17 A. Yes.  
18 Q. Were you able to listen to what other people  
19 were saying or were you excluded?  
20 A. I was excluded. I was brought in to testify.  
21 Q. Are you guessing that Mr. McDowell was there  
22 at the time that you were testifying?  
23 A. I thought I remember seeing him there, but I  
24 guess I don't know for a fact he was or not.

Page 17

1 Q. Okay. Aside from maybe seeing him in the  
2 courtroom while you were testifying, did you see  
3 Mr. McDowell at any other point in time during the  
4 criminal case against Mr. Morandi?  
5 A. No, not that I recall.  
6 Q. Did you ever have any kind of conversation at  
7 all with Mr. McDowell?  
8 A. Outside of the incident?  
9 Q. Right.  
10 A. No, not that I recall.  
11 Q. Did you ever go to the hospital where  
12 Mr. McDowell was located following the incident?  
13 A. No.  
14 Q. Did anybody from Lansing to your knowledge go  
15 to that hospital while --  
16 A. Not to my knowledge.  
17 Q. -- Mr. McDowell was there?  
18 A. Not to my knowledge. I'm sorry.  
19 Q. I know we're talking over one another, we're  
20 going really quick, but I'll try to stop if you will  
21 too. Okay?  
22 A. Okay.  
23 Q. All right. So let's talk about June 25th,  
24 2011. You were on duty as a Lansing police officer that



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1 date; is that right?  
 2 A. Yes.  
 3 Q. And what was your assignment on that day?  
 4 A. Patrol officer. Patrol.  
 5 Q. In uniform?  
 6 A. Yes.  
 7 Q. Could you describe your uniform, please.  
 8 A. It's a dark -- dark blue, like a midnight  
 9 blue, silver badge.  
 10 Q. Dark blue pants and shirt?  
 11 A. Yes.  
 12 Q. And were you in a marked squad car?  
 13 A. Yes.  
 14 Q. Did your squad car have a squad car camera in  
 15 it?  
 16 A. Yes.  
 17 Q. And how did that squad car camera operate?  
 18 A. It becomes active when the lights turn on.  
 19 Q. You mean the Mars lights?  
 20 A. Pardon?  
 21 Q. The Mars lights?  
 22 A. The top lights on the squad, yes, the  
 23 emergency lights.  
 24 Q. That's automatic?

Page 19

1 A. Yes.  
 2 Q. Is this a digital squad car camera or is this  
 3 one of those old fashioned ones where you're still  
 4 putting a videotape in there?  
 5 A. We had upgraded and I don't know the exact  
 6 date of the upgrade, so I don't know which version was  
 7 in at that time.  
 8 Q. Now, are you assigned a specific squad car  
 9 every shift or do you have a different one per shift?  
 10 A. We are assigned squad cars, but it depends if  
 11 it's not operational or for whatever reason you may take  
 12 another squad car. So I don't know if that was my  
 13 assigned squad car that date or if it was maybe a pool  
 14 car.  
 15 Q. Okay. But your squad car on that date  
 16 definitely had a squad car camera?  
 17 A. To my knowledge, yes.  
 18 Q. And is there just one that points out in front  
 19 of the squad car or is there also a camera that goes to  
 20 the cage?  
 21 A. We now have one in the cage. It wasn't always  
 22 like that. So I don't know if there was one at that  
 23 time or not pointing at the cage.  
 24 Q. And the squad car camera that was in the squad

Page 20

1 car on that date, did it also have a microphone that you  
 2 could place on your person?  
 3 A. Yes.  
 4 Q. And did you have that microphone on you?  
 5 A. I don't recall activating it on, so I don't  
 6 believe it was on.  
 7 Q. I'm not asking if it was turned on. I'm  
 8 asking if you actually had it on your person?  
 9 A. Oh, had it on my person, more than likely.  
 10 Q. And where would you normally clip it?  
 11 A. My shoulder.  
 12 Q. And how does the squad car camera turn on  
 13 aside from the Mars lights -- the emergency lights?  
 14 A. You can manually turn it on by hitting a  
 15 record button. You could also activate it with the  
 16 microphone.  
 17 Q. Could you --  
 18 A. By activating the microphone -- turning the  
 19 microphone on should automatically activate the camera.  
 20 Q. Okay. So for instance just hypothetically, if  
 21 you're outside of your squad car and you want to  
 22 activate the camera you don't have to go back in, you  
 23 can just turn on your microphone?  
 24 A. You could either turn -- turning it on may

Page 21

1 activate it or you may have to push a button on it, but  
 2 that usually works, either turning it on or pushing a  
 3 button if it's already on.  
 4 Q. Okay. And when the camera goes on, does the  
 5 mike go on too?  
 6 A. If the microphone is turned on, yes, it will  
 7 start recording audio.  
 8 Q. And the squad car camera, where was it  
 9 located; was it in the front window, was it -- just  
 10 without guessing, just tell us where it was mounted?  
 11 A. It's pointing out the front windshield looking  
 12 forward.  
 13 Q. In the center of the windshield?  
 14 A. About the center.  
 15 Q. Okay. Is there also a screen of some kind,  
 16 like a digital type screen that shows you when you're in  
 17 the squad car what is being recorded on the video  
 18 camera?  
 19 A. With the old camera there was a screen mounted  
 20 near it that you could turn on and off. With the new  
 21 camera system we have now you can view the screen  
 22 through the laptop.  
 23 Q. You're talking about the MDT, PDT system?  
 24 A. Yes.



Page 22

1 Q. Which one was in effect at that time?  
 2 A. I don't recall.  
 3 Q. But certainly there was --  
 4 A. One or the other.  
 5 Q. -- one or the other?  
 6 And did you check to see if that squad car  
 7 camera was working at the beginning of your shift?  
 8 A. I don't recall.  
 9 Q. Do you know if it was working?  
 10 A. I don't recall.  
 11 Q. Anything that might help you remember that?  
 12 A. Unless they have some records at the police  
 13 department, some footage of me, no.  
 14 Q. Do you have to -- As part of your protocol  
 15 when you get into the squad car, do you have to check to  
 16 see if it's working?  
 17 A. Yeah, you're supposed to sync your microphone  
 18 and check.  
 19 Q. And how do you go about doing that?  
 20 A. You place your microphone into the microphone  
 21 dock inside the squad car and -- just to sync it, which  
 22 is -- I'm in the practice of doing.  
 23 Q. Okay.  
 24 A. So ...

Page 23

1 Q. And if you do that and you notice that the  
 2 squad car camera or the microphone are not working, do  
 3 you have to fill out any kind of paperwork indicating  
 4 that it's not working?  
 5 A. Yes, you should do that.  
 6 Q. And can you explain what kind of document  
 7 you're supposed to document that in?  
 8 A. Similar -- It's like a work order -- a work  
 9 order type document just specifically stating what's  
 10 wrong, you know, with the vehicle.  
 11 Q. And do you then turn that in at the end of  
 12 your shift or do you turn it in before you leave the  
 13 station?  
 14 A. It's no specific time. Probably before you  
 15 leave preferably.  
 16 Q. And where do you turn that in?  
 17 A. To a sergeant.  
 18 Q. And what is the -- Is it titled something or  
 19 is it just called work order?  
 20 A. It's like a vehicle repair order.  
 21 Q. Do you have any memory at all of preparing any  
 22 such repair order in connection with the squad car  
 23 camera?  
 24 A. No memory of that.

Page 24

1 Q. Okay. And the vehicle repair order would  
 2 specifically say that the squad car camera is not  
 3 working?  
 4 A. If I wrote one, yes.  
 5 Q. I'm sorry?  
 6 A. If I did write one, that's what I -- I would  
 7 write something similar to that.  
 8 Q. And you had a Taser on that date as well?  
 9 A. Yes.  
 10 Q. What was the model?  
 11 A. X26.  
 12 Q. Did it have a Taser camera on it?  
 13 A. No.  
 14 Q. Did you check to see if that was functioning  
 15 by way of a field test?  
 16 A. I'm in the practice of turning it on, but I  
 17 don't recall that day exactly turning it on prior to the  
 18 incident.  
 19 Q. Now, did that Taser have a functioning laser  
 20 pointer?  
 21 A. To my recollection, yes.  
 22 Q. And was the laser pointer turned on during  
 23 this incident?  
 24 A. I believe that it was.

Page 25

1 Q. And the prongs that were attached to the  
 2 Taser, were they 15-foot, 25-, or 35-foot prongs?  
 3 A. I believe, 25.  
 4 Q. That's the ones with the yellow, right?  
 5 A. Yes, yellow.  
 6 Q. And the way the Taser works, if memory serves,  
 7 is the laser pointer is supposed to point where the top  
 8 prong would be deployed not where the bottom prong would  
 9 be deployed; is that right?  
 10 MR. MATHEWS: I just object to the incomplete  
 11 hypothetical, but go ahead.  
 12 BY THE WITNESS:  
 13 A. There's a spread. So depending on the  
 14 distance, you know, it -- there's no way -- it's not  
 15 going to hit exactly where -- more than likely exactly  
 16 where the dot is at because the greater the distance the  
 17 greater the spread of the two probes.  
 18 Q. Okay. And you had been Taser certified prior  
 19 to this date?  
 20 A. Yes.  
 21 Q. And you had deployed your Taser prior to that  
 22 date at least in training exercises; is that right?  
 23 A. Yes.  
 24 Q. And had you been tased yourself during those

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1 training exercises?

2 A. Yes.

3 Q. And had you ever deployed your Taser in the

4 field prior to that date?

5 A. Yes.

6 Q. On how many times? Give us a ballpark.

7 A. Ballpark, three times.

8 Q. Okay. And when was the last time that you had

9 been Taser certified prior to June 25th, 2011, if you

10 know?

11 A. I don't recall.

12 Q. Is it once a year, twice a year, once every

13 two years; what is it in Lansing?

14 A. I'd have to review my training documents. I

15 don't know.

16 Q. When did you first become Taser certified; was

17 that in your initial probationary status?

18 A. I took the Taser class at the police academy

19 for the first time.

20 Q. At PTI?

21 A. Yes, PTI.

22 Q. So that would have been sometime in 2007?

23 A. Yes.

24 Q. And you had been Taser recertified since then?

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1 A. Yes.

2 Q. Through Lansing?

3 A. Yes.

4 Q. Okay. And you had taken people into custody

5 prior to June 25th, 2011; is that correct?

6 A. Yes.

7 Q. You detained people prior to that date?

8 A. Yes.

9 Q. And as a police officer, when would you define

10 somebody as being in your custody or being detained by

11 you?

12 A. I would define that when their freedom of

13 movement is restricted as being them taken into custody

14 or detained.

15 Q. Okay. Was Marlo McDowell in your custody

16 prior to him being kicked?

17 A. I would say he was being detained.

18 Q. Okay. So his freedom of movement was being

19 restrained by you?

20 A. Yes.

21 Q. Okay. Again, June 25th, 2011 you were on

22 duty. What time did your shift start?

23 A. I believe 11:00 p.m. that night.

24 Q. So it would have begun at June 24th, 2011; is

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1 that right?

2 A. Yes, that sounds right.

3 Q. And when was your shift supposed to end?

4 A. 7:00 a.m.

5 Q. And do you recall arresting --

6 A. Correction. I believe it was 7:30. It's

7 eight and a half hours.

8 Q. Thank you. And do you recall having arrested

9 anybody else or taken any other police action during

10 this shift?

11 A. I don't recall.

12 Q. At some point you heard that there was

13 something involving Bottoms Up; is that right?

14 A. Yes.

15 Q. Had you been to that location before?

16 A. Yes.

17 Q. And were you familiar with the area?

18 A. Yes.

19 Q. And that was unincorporated Lansing; is that

20 correct?

21 A. Correct.

22 Q. So how did you first if -- And if you need to

23 review those documents in front of you to help jog your

24 memory a little bit --

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1 A. Okay.

2 Q. -- please do that. All right?

3 A. Okay.

4 Q. Now, how did you learn that there was

5 something involving Bottoms Up?

6 A. I received a dispatch.

7 Q. And what is the dispatch service that Lansing

8 police used at the time; was that in-house or is that

9 some other organization?

10 A. In-house.

11 Q. What did you learn through the dispatch?

12 A. I believe it was a call for a fight in

13 progress at Bottoms Up.

14 Q. Was there anything else that you knew at that

15 point or just that -- was that just it?

16 A. That's all I can recall.

17 Q. Anything that might help you remember anything

18 else?

19 A. Dispatch.

20 Q. Please look at it.

21 A. Thank you. It says a subject being jumped in

22 parking lot; reportedly an off-duty officer and two

23 suspects; one male black, black shirt and khaki shorts;

24 two male white; no further description.

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1 Q. So what you're doing is you're actually  
2 reading from a portion of the Lansing incident report  
3 from specifically page D6; is that right?  
4 A. Correct.  
5 Q. Okay. Does that actually help jog your memory  
6 as to what you learned during this dispatch?  
7 A. I don't remember that. From what I remember  
8 it was a fight in progress, but I don't remember  
9 descriptions or anything.  
10 Q. Okay. And did you acknowledge the dispatch?  
11 A. Yes.  
12 Q. Were you specifically dispatched to this call?  
13 A. I believe I was, yes.  
14 Q. And did you work a specific beat at the time  
15 or was it a whole citywide that you were working?  
16 A. I don't remember my beat assignment that day.  
17 Q. But you do have beats?  
18 A. We do. There was also a float beat too.  
19 Q. A float meaning going from one beat to the  
20 other as an extra car?  
21 A. Yeah, meaning any beat.  
22 Q. How many beats are in Lansing?  
23 A. Four.  
24 Q. So being fully staffed that would mean you'd

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1 have five squad cars out; is that right?  
2 A. Minimum shifts are different depending on the  
3 time.  
4 Q. Okay. Would it be one squad per beat plus one  
5 floater?  
6 A. For midnights a minimum is four patrol  
7 officers and one supervisor.  
8 Q. And who was your direct supervisor on that  
9 date?  
10 A. I don't recall.  
11 Q. Looking at this document in front of you to  
12 see if that helps jog your memory.  
13 A. Does not appear to specify.  
14 Q. We have -- I'm looking at this first page of  
15 the incident report. The personnel are Percak,  
16 P E R C A K -- and I don't know if I pronounced that  
17 right -- there's a Yonker, a Hynek, and a Jones in  
18 addition to you. Do you see where I'm reading from?  
19 A. Yes.  
20 Q. Would one of those people have been your  
21 supervisor?  
22 A. No.  
23 Q. Are these all squad -- Strike that.  
24 Are those all patrol officers?

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1 A. Yes.  
2 Q. Okay. And would there have been an officer in  
3 charge or sergeant at the time?  
4 A. We don't have an officer in charge, so it  
5 would be a sergeant or a lieutenant.  
6 Q. And -- Okay. So where were you when you heard  
7 that dispatch about the battery in progress?  
8 A. I don't recall my exact location.  
9 Q. And what did you do when you heard the  
10 dispatch?  
11 A. I began to respond to Bottoms Up.  
12 Q. And how did you do that?  
13 A. I drove there in my patrol car.  
14 Q. Well, did you go there as fast as you could?  
15 A. I believe I went with my lights -- at least my  
16 lights on and I expedited. Not as fast as I could  
17 possibly drive, but I expedited.  
18 Q. Okay. And did you eventually get to Bottoms  
19 Up?  
20 A. Yes.  
21 Q. Were you the first police officer that arrived  
22 as far as you know?  
23 A. Yes.  
24 Q. And where did you park?

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1 A. Parked in the area of the front entrance.  
2 Q. And which direction was your squad car  
3 pointing?  
4 A. It was pointing in probably like a northwest  
5 type angle.  
6 Q. And would that be pointing towards the front  
7 entrance of the Bottoms Up or in a different location?  
8 A. Towards it at a diagonal, from my  
9 recollection.  
10 Q. Would it also be pointing towards the parking  
11 lot?  
12 A. It was pointing towards the building itself.  
13 The parking lot was west of that location. It was  
14 slightly pointing that way.  
15 Q. Now, when you said you put your lights on to  
16 go there, would those -- those would have been the  
17 emergency lights; is that right?  
18 A. Yes.  
19 Q. And had your squad car camera been  
20 functioning, it would have been turned on by that?  
21 A. Correct.  
22 Q. And did you ever turn off the squad car  
23 camera?  
24 A. I don't recall if I turned the lights off. I

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1 think I did turn the lights off once I got on scene.  
2 Q. I'm talking about the squad car camera itself;  
3 do you have any memory of turning it off?  
4 A. We don't have the ability to manually shut the  
5 camera off. It shuts itself off when the lights are  
6 turned off.  
7 Q. Okay. And you indicated that you believe you  
8 turned the lights off when you arrived?  
9 A. I believe I did. I don't recall exactly  
10 though.  
11 Q. Why did you do that or why do you believe you  
12 did that?  
13 A. There would have been no reason for them to  
14 stay on. But if I ran out of the car, I may not have  
15 shut them off. I don't remember.  
16 Q. Okay. Well, on the way to Bottoms Up, were  
17 there any further -- was there any further information  
18 that you learned from dispatch other than the initial  
19 dispatch?  
20 A. Those descriptions may have come out on the  
21 air, but I don't recall.  
22 Q. Did you contact dispatch to inform dispatch  
23 that you had arrived at Bottoms Up?  
24 A. I would have done that out of practice. I

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1 don't recall doing it, but I probably did.  
2 Q. Anything that might help you remember if in  
3 fact you did?  
4 A. Take a look here.  
5 Q. Yeah, go ahead.  
6 A. I don't know if this says. I don't see it  
7 documenting me calling it in.  
8 Q. Does that mean you did not?  
9 A. No.  
10 Q. You could have still called in?  
11 A. Sure, yes.  
12 Q. But you have no memory either way?  
13 A. I don't have -- I don't remember exactly if I  
14 did or not.  
15 Q. Okay. And how long did it take you to get to  
16 Bottoms Up from the time you got the dispatch?  
17 A. I'd say about a minute to a minute and a half.  
18 Q. All right. And -- All right. So you got to  
19 Bottoms Up, you indicated that you parked in the front  
20 by the front entrance; right?  
21 A. Yes.  
22 Q. Did you see any people outside of the Bottoms  
23 Up when you first arrived?  
24 A. Not that I recall.

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1 Q. Okay. And what did you do when you got there?  
2 A. Something drew my attention to the parking  
3 lot. I don't remember exactly what it was. It may have  
4 been somebody pointing out -- pointing me to that  
5 direction, but I ran over to where the incident was  
6 happening.  
7 Q. Okay. So obviously the first thing you did is  
8 you got out of your squad car, right?  
9 A. Yes.  
10 Q. And then you said something drew your  
11 attention to the parking lot?  
12 A. Yes.  
13 Q. Could you be more specific?  
14 A. I don't recall what drew my attention to where  
15 the fight was at. A lot of times when we get on scene  
16 people will point out, hey, over there, you know. I  
17 don't remember what that was, but something drew my  
18 attention over to where the fight was happening.  
19 Q. And is --  
20 A. And I proceeded on foot to that location.  
21 Q. Is there anything that might help you remember  
22 what it was that drew your attention to the parking lot?  
23 A. No, not that I can think of.  
24 Q. Now, when you arrived at Bottoms Up and you

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1 got out of your squad car, did you immediately take your  
2 Taser out?  
3 A. No, not that I recall.  
4 Q. All right. And you said something about you  
5 ran over to the parking lot; is that right? I don't  
6 want to mischaracterize, so I think those were your  
7 words.  
8 A. They were my words. I believe I moved there  
9 pretty quickly.  
10 Q. Okay.  
11 A. But I don't know if I ran or not exactly.  
12 Q. But you went there quickly?  
13 A. Yeah, I'd say I went quickly.  
14 Q. All right. So as you're heading to the  
15 parking lot, do you see any people?  
16 A. Once I got to that parking lot on the west  
17 side, I did see people.  
18 Q. All right. And how many people did you see  
19 when you get to the parking lot?  
20 A. Approximately four people.  
21 Q. Men, women?  
22 A. Men.  
23 Q. How about the races; do you recall?  
24 A. I know there was one male black.

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1 Q. That being the other --  
2 A. I think --  
3 Q. -- Marlo McDowell?  
4 A. Yes.  
5 Q. Okay. Who else?  
6 A. I believe the other gentlemen were male  
7 whites, possibly male Hispanic after hearing the last  
8 name of one of them, but I don't totally recall.  
9 Q. Do you recall what any of them were wearing?  
10 A. No.  
11 Q. When you first saw these individuals, where in  
12 the parking lot were they located?  
13 A. They were near -- I'd say near the center of  
14 that parking lot.  
15 Q. Are there any landmarks that you can say  
16 within the parking lot that you can put them, they were  
17 close to this or not as close to that, something like  
18 that?  
19 A. Not that I can completely think of. They  
20 weren't far from the building.  
21 Q. When you say not far from the building, were  
22 they less than 50 feet from the building?  
23 A. I'd say less.  
24 Q. Were there any cars in the parking lot?

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1 A. I believe there were cars in the parking lot.  
2 Q. How many cars were in the parking lot?  
3 A. I don't know.  
4 Q. Anything that might help you remember?  
5 A. No, unless it's documented on Cook County  
6 reports; but I didn't write those, so no.  
7 Q. And where were those four people in relation  
8 to each other when you first saw them?  
9 A. They were in close proximity of each other.  
10 Q. And what were they doing?  
11 A. They were engaged in a physical altercation.  
12 Q. When you say they were engaged in a physical  
13 altercation, can you just articulate for us what you  
14 mean by that?  
15 A. I noticed a group of men engaged in a brawl,  
16 fight.  
17 Q. What do you mean by brawl?  
18 A. I mean, like they were boxing each other.  
19 Q. Okay. Was Marlo McDowell in your presence  
20 punching anybody?  
21 A. He was in the group. I don't know exactly who  
22 was punching who. It was a chaotic scene.  
23 Q. Did you see Marlo McDowell throw any punches?  
24 A. I don't recall.

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1 Q. Anything that might help you remember?  
2 A. No.  
3 Q. Did you see anybody punch Marlo McDowell in  
4 your presence?  
5 A. I don't recall.  
6 Q. Anything that might help you remember?  
7 A. No.  
8 Q. Did you see any of these other three men, not  
9 including Marlo McDowell, throw any punches in your  
10 presence?  
11 A. I believe so, but I don't recall specifically.  
12 Q. You couldn't say who was doing what?  
13 A. Exactly.  
14 Q. And did it seem to be three on one, two on  
15 two?  
16 A. I was unable to determine who was -- who were  
17 the enemy and who were friends with each other.  
18 Q. Okay.  
19 A. It was chaotic.  
20 Q. And were any of these people saying anything  
21 when you first saw them?  
22 A. Not that I recall.  
23 Q. Does that mean they were not or does that mean  
24 you don't remember either way?

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1 A. I don't remember any verbal statements.  
2 Q. And how far were you from this group of people  
3 when you first saw them?  
4 A. I would say approximately 15 to 20 feet.  
5 Q. Now, was your view of these people blocked  
6 where you were first parking your car?  
7 A. Yes.  
8 Q. And what was your view of these people blocked  
9 by?  
10 A. The building itself.  
11 Q. Okay. So when you cleared the building is  
12 when you first saw them?  
13 A. Yes.  
14 Q. And did you say anything once you saw those  
15 people engaging in this altercation?  
16 A. I ordered them to the ground.  
17 Q. How did you do that?  
18 A. It was something to the effect of "get on the  
19 ground."  
20 Q. And this was when you were 15 to 20 feet from  
21 them?  
22 A. Yes.  
23 Q. And when you first saw these -- this group of  
24 four people engaged in this altercation, did you stop or



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1 did you continue going in their direction?  
 2 A. I stopped shortly after I saw them.  
 3 Q. And did you draw any weapons?  
 4 A. I had my Taser out.  
 5 Q. Is that when you first saw them or immediately  
 6 thereafter?  
 7 A. I don't recall exactly when I drew my Taser  
 8 out, but I know I had it in my hand.  
 9 Q. Now, did you have it in your hand before or  
 10 after you issued your command?  
 11 A. I don't recall.  
 12 Q. Anything that might help you remember?  
 13 A. No.  
 14 Q. All right. And did you contact dispatch once  
 15 you saw this group of people?  
 16 A. I believe that I did.  
 17 Q. Okay. And what was the purpose of calling  
 18 dispatch at that point in time?  
 19 A. If I did contact them it would just be to  
 20 verify there was in fact a fight happening.  
 21 Q. And were there any other police officers on  
 22 scene that you were aware of when you first saw this  
 23 altercation with the four people?  
 24 A. To my recollection, no. After reading this

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1 dispatch it did say that there was a -- let me see how  
 2 it said it -- an off-duty officer there, but I don't  
 3 recall knowing that before I got there.  
 4 Q. Would that be Ricky Ramirez?  
 5 A. I believe so.  
 6 Q. Okay. I was talking about anybody from  
 7 Lansing or the Cook County Sheriff's Department.  
 8 A. No, I was the only one present when I first  
 9 got there.  
 10 Q. So as far as you knew, you were the only  
 11 on-duty uniformed officer when you first saw these  
 12 people in the altercation; is that correct?  
 13 A. Yes.  
 14 Q. And the command you said is you told them to  
 15 exactly just get on the ground?  
 16 A. Get down on the ground.  
 17 Q. And how many times did you issue that command?  
 18 A. I don't recall how many times.  
 19 Q. More than once?  
 20 A. It was issued more than once for one subject  
 21 there.  
 22 Q. So when you issued your first command for  
 23 everybody to get on the ground, did anybody comply at  
 24 that point?

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1 A. Everybody complied except for one.  
 2 Q. Was that Morandi?  
 3 A. Yes.  
 4 Q. All right. So just to be clear, when you  
 5 issued the command for -- your initial command for these  
 6 people to get on the ground, Marlo McDowell got on the  
 7 ground; is that right?  
 8 A. I don't recall how many times I said it before  
 9 everybody got down, but most of the guys except for  
 10 Morandi got down pretty quickly.  
 11 Q. Okay. So Marlo McDowell was one of the people  
 12 that got down?  
 13 A. He was one of the ones that went down quickly,  
 14 yes.  
 15 Q. And did you have your Taser directed at  
 16 anybody in particular?  
 17 A. Mr. Morandi.  
 18 Q. How about initially?  
 19 A. In practice it would have been at like a low  
 20 ready, but I don't remember who I had it pointed at  
 21 before everyone went down.  
 22 Q. When you said it's low ready, what do you mean  
 23 by that?  
 24 A. It would have been not pointed at anybody,

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1 just pointed towards the ground.  
 2 Q. Holding it in your hand and just pointing  
 3 it --  
 4 A. Just had it ready in case I do need to go up  
 5 with it, but not necessarily pointed at anybody.  
 6 Q. Okay. Do you remember one way or the other  
 7 whether the first person you pointed it at was Marlo  
 8 McDowell?  
 9 A. I don't recall.  
 10 Q. Anything that might help you remember that?  
 11 A. No.  
 12 Q. And did you continue issuing commands after  
 13 the initial one of getting on the ground? Well, let me  
 14 just do it this way. You get there, you tell people to  
 15 get on the ground, three of the four get on the ground  
 16 immediately; is that right?  
 17 A. Yes.  
 18 Q. Okay. What does Morandi do at that point?  
 19 A. Morandi just was standing there.  
 20 Q. Okay. And Morandi when he was standing there,  
 21 where was he in relation to you?  
 22 A. He was in front of me and I think his body was  
 23 just facing me -- it was facing near me.  
 24 Q. Okay. And how many feet was he from you at

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1 that point in time?  
 2 A. Probably 15, 20 feet.  
 3 Q. All right. And were you standing still at  
 4 that point or were you closing in on Morandi?  
 5 A. I believe I was standing still.  
 6 Q. And where was McDowell at this point in time?  
 7 A. From my recollection McDowell was on the  
 8 ground right next to Morandi.  
 9 Q. And when you say McDowell was on the ground,  
 10 was he on his side, on his back, on his stomach?  
 11 A. I couldn't say for sure.  
 12 Q. You don't remember?  
 13 A. Not for sure, no.  
 14 Q. Anything that might help you remember?  
 15 A. No.  
 16 Q. And how about McDowell's hands, how were they  
 17 positioned when he was on the ground?  
 18 A. I don't recall.  
 19 Q. Anything that might help you remember?  
 20 A. No.  
 21 Q. And was McDowell saying anything when he was  
 22 on the ground?  
 23 A. Not that I recall.  
 24 Q. How about the other three people that

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1 were on -- Strike that.  
 2 How about the other two people, where were  
 3 they in relation to Morandi when Morandi is standing  
 4 there?  
 5 A. From my recollection, the other two were to  
 6 the right of him.  
 7 Q. And was McDowell to the left of Morandi or was  
 8 he also to the right of Morandi?  
 9 A. From my recollection he was to the right.  
 10 Q. So all three people were to the right of  
 11 Morandi?  
 12 A. To my recollection.  
 13 Q. And were they in a row one next to the other?  
 14 A. From my recollection it was Morandi, McDowell  
 15 next to him, and then there was a little bit of a  
 16 distance and then the other two, I believe.  
 17 Q. And when you say a little bit of a distance,  
 18 how much of a distance are we talking about?  
 19 A. Maybe 10 or 15 feet.  
 20 Q. Okay. And then those other two were closer to  
 21 each other than they were to McDowell?  
 22 A. I believe so, but I couldn't say exactly for  
 23 sure.  
 24 Q. Those other two people that were on the

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1 ground -- I'm not talking about McDowell; do you  
 2 understand that?  
 3 A. Yes.  
 4 Q. (Continuing.) -- how were they positioned on  
 5 the ground?  
 6 A. I don't recall.  
 7 Q. Anything that might help you remember?  
 8 A. No.  
 9 Q. Were those other people saying anything while  
 10 they were on the ground?  
 11 A. Not to my recollection.  
 12 Q. Okay. When those three people are on the  
 13 ground and Morandi is standing, did you hear or see a  
 14 woman in the parking lot?  
 15 A. Not at -- I remember seeing a woman during the  
 16 incident. I don't remember exactly when.  
 17 Q. Would that be Noelle Folden?  
 18 A. I don't know her name.  
 19 Q. Could you describe what she looks like?  
 20 A. She was a female black. I believe she was  
 21 Mr. McDowell's girlfriend.  
 22 Q. At some point you realize she was on the  
 23 scene?  
 24 A. Yes.

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1 Q. But you don't remember when you realized that?  
 2 A. Yes.  
 3 Q. And when you said that Morandi was positioned  
 4 to the left of McDowell, how far away was he from  
 5 McDowell?  
 6 A. Very close. Within touching distance.  
 7 Q. So less than five feet?  
 8 A. Yes.  
 9 Q. And was Morandi positioned closer to  
 10 McDowell's legs, his center mass, or his head?  
 11 A. I would say his head.  
 12 Q. And did Morandi have his hands up -- Strike  
 13 that.  
 14 How were Morandi's hands positioned when he  
 15 was standing 15 to 20 feet in front of you?  
 16 A. I don't recall his position of his hands.  
 17 Q. Anything that might help you remember?  
 18 A. No.  
 19 Q. And as Morandi is standing after the other  
 20 three get on the ground, what do you do at that point?  
 21 A. My attention is on Morandi and I'm issuing  
 22 commands continuously for him to get on the ground.  
 23 Q. How many commands?  
 24 A. Numerous, but I don't recall the exact amount.



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1 Q. And are you pointing the Taser at him?  
 2 A. Yes.  
 3 Q. And is the laser pointer functioning at that  
 4 point?  
 5 A. I believe that it was.  
 6 Q. Where was the laser pointer pointing?  
 7 A. I don't recall the exact spot.  
 8 Q. How about the general spot?  
 9 A. More than likely center mass.  
 10 Q. Meaning his chest or just below his chest?  
 11 A. Yes.  
 12 Q. And does Morandi respond in any way, whether  
 13 verbally or physically, to your commands for him to get  
 14 on the ground?  
 15 A. Not at first.  
 16 Q. Does he eventually respond?  
 17 A. Yes.  
 18 Q. Tell us what happens.  
 19 A. When he did respond, he sat on the ground.  
 20 Q. Did something happen before he responded?  
 21 A. Yes.  
 22 Q. What was that?  
 23 A. He kicked Mr. McDowell.  
 24 Q. Okay. All right. So just the time line of

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1 it, how long was Morandi standing in front of you before  
 2 he kicked McDowell?  
 3 A. It was seconds. Probably about 10 seconds.  
 4 Q. Okay. Now, in that 10 seconds, tell us  
 5 everything you did to try to make Morandi comply with  
 6 your commands.  
 7 A. I had my Taser pointed at Mr. Morandi and I  
 8 was yelling to get on the ground, "get on the ground,  
 9 get on the ground."  
 10 Q. And did he do anything at all to comply with  
 11 that before he kicked McDowell?  
 12 A. No.  
 13 Q. In that 10 seconds, tell us everything you  
 14 remember that you observed Morandi doing.  
 15 A. From my recollection Morandi he was facing  
 16 towards my direction, he seemed drowsy, appeared -- you  
 17 know, from -- possibly from intoxication. I remember  
 18 his eyes were half open or appeared to make this  
 19 drowsiness -- to make him appear drowsy. That's all I  
 20 can remember. I don't know if he was looking at me or  
 21 not.  
 22 Q. Were you focused completely on Morandi in that  
 23 time frame?  
 24 A. Most of my attention was on Morandi, if not

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1 all of it.  
 2 Q. And at the point in time that Morandi kicked  
 3 McDowell, at that point in time to your knowledge were  
 4 there any other uniformed police officers on scene?  
 5 A. No.  
 6 Q. And describe articulately for us exactly how  
 7 Morandi went about kicking McDowell.  
 8 A. It was just one single swift kick. It was  
 9 just a kick, and from my recollection afterwards he just  
 10 faced my direction again right after the kick.  
 11 Q. And did Morandi -- Where did Morandi kick  
 12 McDowell?  
 13 A. It appeared to be the area of his head.  
 14 Q. Which side of his head?  
 15 A. I don't recall.  
 16 Q. And which side of McDowell's body was closest  
 17 to Morandi; was it McDowell's right side of his body or  
 18 the left side of his body?  
 19 A. I don't recall.  
 20 Q. Anything that might help you remember that?  
 21 A. No.  
 22 Q. And if we're talking directionally, you said  
 23 that McDowell was to the right of Morandi at that point  
 24 in time; right?

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1 A. From my memory.  
 2 Q. And if we're talking directionally, north,  
 3 west, east, south, can you describe for us was he to the  
 4 north, to the west, to the east, or to the south of --  
 5 meaning was McDowell to the north of Morandi or to the  
 6 south of Morandi or west or east?  
 7 A. Mr. McDowell would have been to the west of  
 8 Mr. Morandi.  
 9 Q. Okay. And that means the other people that  
 10 were on the ground were also to the west of Morandi?  
 11 A. Correct.  
 12 Q. And geographically speaking again, where were  
 13 you in relation to Morandi?  
 14 A. I was to the south of Mr. Morandi.  
 15 Q. Okay. Were there any objects that were  
 16 obstructing your view of McDowell in that 10 seconds  
 17 before he was kicked?  
 18 A. Not to my recollection.  
 19 Q. Was there -- Were there any objects that were  
 20 obstructing your view of Morandi in those 10 seconds  
 21 while Morandi was standing there?  
 22 A. Not to my recollection.  
 23 Q. Now, if I understand, what you testified to  
 24 was that Morandi essentially turned and kicked McDowell

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1 and then turned and faced you again; is that right?  
2 A. To my recollection.  
3 Q. Okay. What's the very next thing that happens  
4 after Morandi turns again and is now facing you?  
5 A. To my recollection I again screamed one last  
6 time to get on the ground and then he complied.  
7 Q. Why didn't you tase him?  
8 A. I didn't tase him because I did not see him  
9 assault Mr. McDowell again or that he was about to  
10 assault him.  
11 Q. Now, when Morandi got on the ground, how did  
12 he get on the ground?  
13 A. To my recollection he sat down Indian style  
14 with his legs crossed.  
15 Q. Facing you?  
16 A. Yes.  
17 Q. And after he sat down, what's the very next  
18 thing that happened?  
19 A. I waited for backup to arrive.  
20 Q. How much time after that did backup arrive?  
21 A. Probably about 40 seconds to a minute.  
22 Q. And was the first officer that arrived a Cook  
23 County Sheriff's deputy or a Lansing officer?  
24 A. I don't remember that.

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1 Q. Other Lansing officers did arrive at some  
2 point?  
3 A. Yes.  
4 Q. Okay. And then Cook County Sheriff's deputies  
5 arrived as well; is that right?  
6 A. Yes.  
7 Q. Did you handcuff anybody before any other  
8 officers arrived?  
9 A. Not that I recall.  
10 Q. From the time that Morandi got on the ground  
11 Indian style until the time backup arrived, what are you  
12 doing?  
13 A. To my recollection I'm just standing ground  
14 just watching.  
15 Q. Issuing any further commands?  
16 A. Not that I recall.  
17 Q. Were you pointing your Taser at anybody?  
18 A. Not that I recall.  
19 Q. Had you put your Taser away?  
20 A. I don't recall.  
21 Q. After McDowell was kicked, what did you  
22 observe about him?  
23 A. I'm sorry?  
24 Q. What did you observe about McDowell after he

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1 was kicked?  
2 A. I don't recall.  
3 Q. Well, when he was kicked or immediately  
4 thereafter did he cry out in pain or do anything that  
5 indicated that he was in pain?  
6 A. I believe he did indicate that he was in pain.  
7 An ambulance was called.  
8 Q. I'm talking immediately at the time that he  
9 was kicked or immediately thereafter.  
10 A. I don't remember if he said anything  
11 immediately or not.  
12 Q. Do you know if he was still conscious after he  
13 was kicked?  
14 A. I don't know if he had any slight  
15 unconsciousness, but he was conscious for the incident  
16 in its entirety that I recall. I don't recall him ever  
17 being unconscious.  
18 Q. Did you ever evaluate him to see if he was  
19 conscious?  
20 A. I did not -- I did not evaluate him like a  
21 physician would evaluate somebody, but I remember him  
22 being conscious the entire time. I don't remember any  
23 unconsciousness. He was talking.  
24 Q. Did you call for an ambulance as soon as you

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1 saw that McDowell was kicked in the face?  
2 A. I don't remember the timing of the ambulance  
3 call.  
4 Q. You don't recall if it was immediately after  
5 he was kicked?  
6 A. I don't recall the exact timing.  
7 Q. Did you ever call for an ambulance?  
8 A. Did I in this incident?  
9 Q. Yes.  
10 A. I believe I did. I believe I was the one that  
11 called it in. Could I check here and see if it says?  
12 Q. Yeah, go ahead.  
13 A. It says Officer Hynek, 332, in Cook County  
14 requested 1052.  
15 Q. 1052 means what?  
16 A. Ambulance.  
17 Q. Officer who?  
18 A. 332 is Officer Hynek.  
19 Q. That is a Lansing police officer?  
20 A. Yes. It says him and Cook County requested  
21 1052, which is an ambulance, for battery victim.  
22 Q. Who's Tyler Niven?  
23 A. He's a dispatcher.  
24 Q. So what you're looking at is the timing at

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1 4:26 and 24 seconds a.m. on June 25th 2011; is that  
2 right?  
3 A. Yes.  
4 Q. Okay. According to the Lansing dispatch  
5 records, you did not ask for an ambulance; is that  
6 correct?  
7 A. Yes.  
8 Q. Does that help refresh your memory as to  
9 whether you requested an ambulance to dispatch?  
10 A. Yes.  
11 Q. And you did not; is that correct?  
12 A. I don't believe I did unless there's an error  
13 on here. I'm going to go by this.  
14 Q. Any particular reason why you did not call for  
15 an ambulance even though you saw McDowell being kicked  
16 in the face?  
17 A. Well, I did not see the -- I did not see  
18 injury. I didn't see exactly what -- I saw the general  
19 kick, but I didn't see if he even made contact exactly  
20 or how -- what the injuries may or may not have been.  
21 So unless I had saw some serious injury myself,  
22 typically would not call an ambulance on your own  
23 without it being requested by the victim.  
24 Q. Who's Unit 151?

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1 A. I believe that's probably a fire department  
2 unit.  
3 Q. What does TOT Cook County mean?  
4 A. Turned over to Cook County.  
5 Q. Okay. All right. So in that 40 seconds from  
6 the time that Morandi gets on the ground until the time  
7 that backup arrives, what are the people on the ground  
8 doing that you see?  
9 A. To my recollection they just remained  
10 stationary on the ground. There was no further  
11 altercation.  
12 Q. And your testimony is in that time frame  
13 McDowell is doing what?  
14 A. He's on the ground.  
15 Q. Doing what exactly?  
16 A. I don't recall.  
17 Q. So in that time frame, do you remember one way  
18 or the other whether he was conscious or had lost  
19 consciousness?  
20 A. I don't recall.  
21 Q. Anything that might help you remember?  
22 A. No. I believe he was conscious, but ...  
23 Q. You don't remember for sure?  
24 A. Yeah. There was a lot of people there, so I

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1 don't remember.  
2 Q. Talking that 40 seconds from the time Morandi  
3 got on the ground until the backup arrives; you  
4 understand that?  
5 A. Yes.  
6 Q. Okay. In that 40 seconds, the black female,  
7 is that when you first saw her; does that help jog your  
8 memory?  
9 A. That sounds correct, but I don't remember  
10 exactly when I first saw her.  
11 Q. At some point you did notice that she was  
12 there, right?  
13 A. Yes.  
14 Q. Where was she when you first noticed her?  
15 A. She was in the parking lot.  
16 Q. Can you be more specific?  
17 A. I'm not exactly sure where in the parking lot.  
18 Q. Where was she in relation to the people that  
19 were lying on the ground?  
20 A. I don't remember.  
21 Q. Was she lying on the ground?  
22 A. No.  
23 Q. Was she saying anything?  
24 A. Yes.

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1 Q. What was she saying?  
2 A. I just recall that she was upset, but I don't  
3 remember her statements.  
4 Q. What was she upset about?  
5 A. She was upset about her boyfriend.  
6 Q. Being kicked in the face?  
7 A. I don't remember exactly if it was for that,  
8 but probably.  
9 Q. Well, tell us to the best of your memory what  
10 you remember observing about her or hearing her say.  
11 A. I just remember that she was upset about the  
12 incident that happened, but I couldn't tell you exact  
13 statements.  
14 Q. And when you say upset, what do you mean by  
15 that?  
16 A. That she was not -- she did not appear to be  
17 happy with the circumstances.  
18 Q. Was she raising her voice; was she -- what  
19 exactly do you mean by that, if you can tell us?  
20 A. I don't remember the volume of her voice.  
21 From my recollection she just appeared to be upset,  
22 saying something to the effect of her boyfriend was a  
23 victim, you know, or something like that, but I don't  
24 remember exactly.

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1 Q. Anything else that you remember in relation to  
2 her?

3 A. No.

4 Q. Can you tell us again exactly why is it that  
5 you did not place Morandi in custody as soon as you saw  
6 him kicking Morandi -- McDowell?

7 A. Can you elaborate that.

8 Q. You saw him commit a battery; is that right?

9 A. Yes.

10 Q. Okay. That's a crime, right?

11 A. Yes.

12 Q. So when you saw him doing that, why didn't you  
13 handcuff him?

14 A. That would have been an officer safety issue.  
15 I was the only one on scene and there was four  
16 combatants.

17 Q. At any point in time, did you place handcuffs  
18 on Morandi?

19 A. No, I don't believe so.

20 Q. Why not?

21 A. I believe another officer did.

22 Q. All right. So you said backup arrived after  
23 about 40 seconds to a minute, right?

24 A. Yes.

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1 Q. When backup arrives where do they come from?

2 A. They came from Lansing. As far as their  
3 direction of travel, I don't know for a fact.

4 Q. I guess that was very poorly worded. What I  
5 mean is -- let's put it this way, when you first  
6 realized that backup was there, how did you know that  
7 backup was there?

8 A. I saw other officers on scene.

9 Q. Okay. And where were they coming from; were  
10 they coming from the same direction you left your squad  
11 car or were they coming from different directions?

12 A. I couldn't say for a fact.

13 Q. And what happens when the first units arrive?

14 A. I recall -- I recall at least one subject  
15 being taken into custody, but I don't remember exactly  
16 the order or who exactly did the handcuffing.

17 Q. And was that subject that you recall Morandi  
18 or was that somebody else?

19 A. To my recollection I recall maybe Ramirez  
20 being taken, but I don't ...

21 Q. Ramirez was the off-duty cop?

22 A. Yes.

23 Q. And -- Well, let's take it back a notch. So  
24 when the arriving responding officers came, the

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1 backups -- okay, you understand?

2 A. Yes.

3 Q. (Continuing.) -- what's the first thing that  
4 happens; did they come to you; did they go somewhere  
5 else; do you say something to them; does anybody else  
6 say something to them?

7 A. I'm sure the situation was explained, but I  
8 don't remember exact statement that I could tell you.

9 Q. Did you explain anything to the responding  
10 officers?

11 A. I probably did, but I -- I don't recall who I  
12 explained it to. I think I talked to one of the Cook  
13 County deputies.

14 Q. Okay. You recall speaking to a Cook County  
15 deputy at some point in time?

16 A. Yes.

17 Q. What did that Cook County deputy look like?

18 A. I don't recall for a fact.

19 Q. Tell us to the best of your memory.

20 A. I think maybe it was -- I think a female was  
21 there -- a female officer, but -- and possibly a male  
22 deputy also.

23 Q. How many Sheriff's deputies do you actually  
24 recall being on scene?

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1 A. I believe at least two.

2 Q. Tell us to the best of your memory what you  
3 relayed to them.

4 A. I believe that I advised that one subject  
5 kicked the other subject.

6 Q. That Morandi kicked McDowell?

7 A. Yes.

8 Q. And when you relayed that information, was  
9 Morandi in handcuffs yet?

10 A. I don't recall.

11 Q. Anything that might help you recall?

12 A. No.

13 Q. At some point McDowell was also placed in  
14 handcuffs; is that correct?

15 A. I don't recall that.

16 Q. Anything that might help you remember that?

17 A. No.

18 Q. At some point ambulances arrived, right?

19 A. Yes.

20 Q. Okay. So let's do it this way: From the  
21 point in time that your backup arrived until the time  
22 that the ambulances arrived, in that time frame tell us  
23 what you remember happening on scene.

24 A. I think Cook County was sorting out what had

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1 happened. They were conducting their investigation.  
 2 Q. And what were you doing in that time frame?  
 3 A. I was just in the area. I wasn't -- I think I  
 4 spoke a little bit to a Cook County Sheriff deputy and  
 5 that's about it.  
 6 Q. Okay. So from the time that the backup units  
 7 arrived until the time the first ambulance arrived, in  
 8 that time frame the only thing you remember doing is  
 9 talking to one or more Sheriff's deputies; is that  
 10 right?  
 11 A. Yes, and I believe I spoke to at least one  
 12 Lansing officer too.  
 13 Q. Okay. And which officer was that?  
 14 A. Probably Officer Hynek.  
 15 Q. And why do you say probably Hynek?  
 16 A. Because I'm recalling him being on scene and I  
 17 think I probably spoke with him, but I don't recall  
 18 exactly if I did or not. I probably did.  
 19 Q. Anything that might help you jog your memory  
 20 as to whether you actually did speak to Officer Hynek?  
 21 A. No.  
 22 Q. Now, again, there's five people including you  
 23 on this incident report from Lansing as being listed as  
 24 having responded in some fashion. So looking at this,

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1 there's a Percak, a Yonker, Hynek, yourself, and Jones;  
 2 right?  
 3 A. Yes.  
 4 Q. You told us that you think that Hynek was  
 5 there and you think you might have spoken to him; is  
 6 that right?  
 7 A. Yes.  
 8 Q. How about the other three, Percak, Yonker, and  
 9 Jones, do you remember any of them actually arriving or  
 10 speaking to them on scene?  
 11 A. No.  
 12 Q. Do you think anything might help you remember  
 13 as to whether any of those officers arrived?  
 14 A. The dispatch records.  
 15 Q. Go ahead.  
 16 A. Well, it indicates 332, Officer Hynek, as  
 17 being on scene since he requested the ambulance, but it  
 18 doesn't indicate whether the officers actually arrived  
 19 or not.  
 20 Q. Okay. So this does not help you remember if  
 21 any of those other officers arrived; is that correct?  
 22 A. No. I believe that they were there, but I  
 23 don't specifically remember their presence. I somewhat  
 24 remember Officer Jones being there.

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1 Q. Is that a male or female?  
 2 A. Male.  
 3 Q. What's his name -- first name?  
 4 A. Michael Jones.  
 5 Q. And from what you remember of Michael Jones  
 6 being on the scene, what was he doing?  
 7 A. I just remember him standing there on scene.  
 8 Q. Okay. So from the time that the backup units  
 9 arrived until the ambulance arrived, in that time frame  
 10 what was the female -- the black female doing, if you  
 11 remember?  
 12 A. I don't remember.  
 13 Q. From the time that the backup units arrived  
 14 until the ambulance arrived, in that time frame tell us  
 15 everything you remember observing about Marlo McDowell.  
 16 A. I think that he was complaining about his  
 17 injury.  
 18 Q. Can you be more specific?  
 19 A. No.  
 20 Q. Do you remember where he was located or how he  
 21 was positioned in that time frame?  
 22 A. No.  
 23 Q. And how far were you from him in that time  
 24 frame?

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1 A. I don't know exactly.  
 2 Q. Did you walk further away from him or did you  
 3 get closer to him than that initial 15 to 20 feet that  
 4 you were from him?  
 5 A. I think that I was within a close range of him  
 6 maybe when he was going into the ambulance or around  
 7 that time. I seem to recall being kind of near him.  
 8 Q. Okay. What did you observe about him at that  
 9 point?  
 10 A. Nothing of note.  
 11 Q. Did he appear to be in pain?  
 12 A. I don't remember if he appeared to be in pain  
 13 or if he was just complaining of the injury.  
 14 Q. And the nature of his complaints, there's  
 15 nothing you remember specifically about what those were;  
 16 is that correct?  
 17 A. Not specifically, no. I think he was  
 18 indicating his head or jaw.  
 19 Q. Okay. Beyond that, you don't remember?  
 20 A. No.  
 21 Q. And how about the other three people that were  
 22 initially involved in the fight, from the time that the  
 23 responding officers arrived until the time that the  
 24 ambulance arrived, in that time frame what were those



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1 other three people doing, that includes Morandi; right?  
 2 A. I don't recall.  
 3 Q. Do you remember anything about what Morandi  
 4 was doing or where he was located from the time that the  
 5 responding officers arrived until the time that the  
 6 first ambulance arrived?  
 7 A. Can you repeat that.  
 8 Q. Yeah. The first responding officers arrived  
 9 you told us 40 seconds to a minute after Morandi gets on  
 10 the ground. From that point in time until the time that  
 11 the first ambulance comes on scene, in that time frame  
 12 tell us everything you remember Morandi doing or saying.  
 13 A. I don't recall.  
 14 Q. Anything that might help you remember?  
 15 A. No.  
 16 Q. How many ambulances eventually came on the  
 17 scene?  
 18 A. I remember one.  
 19 Q. And that's the one that tended to Marlo  
 20 McDowell?  
 21 A. Yes.  
 22 Q. And you said you recall him being taken into  
 23 the ambulance; is that right?  
 24 A. Yes.

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1 Q. Did he go into the ambulance of his own power  
 2 or was he wheeled in on a stretcher?  
 3 A. I don't remember.  
 4 Q. Anything that might help you remember?  
 5 A. No. It may be documented in the ambulance  
 6 report.  
 7 Q. Did you have any conversations at all with the  
 8 paramedics that arrived on scene?  
 9 A. Not to my recollection.  
 10 Q. And did you see what, if anything, the  
 11 paramedics were doing in treating Marlo McDowell?  
 12 A. Not specifically.  
 13 Q. How about generally?  
 14 A. I know that they were treating him, but that's  
 15 about it. I don't know exactly what they were doing to  
 16 treat him.  
 17 Q. And when the paramedics were treating Marlo  
 18 McDowell, where was this black female?  
 19 A. I don't know her exact location.  
 20 Q. Okay. And after McDowell was placed into the  
 21 ambulance, did the ambulance leave?  
 22 A. I believe that it left at some point, yes.  
 23 Q. Were you still on scene when the ambulance had  
 24 left?

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1 A. I don't remember.  
 2 Q. At what point in time did you leave the scene?  
 3 A. I don't remember the exact time.  
 4 Q. How long were you on the scene?  
 5 A. Probably approximately 20, 25 minutes.  
 6 Q. Were there any other police officers that were  
 7 left on the scene after you left?  
 8 A. I don't remember.  
 9 Q. Anything that might help you remember?  
 10 A. No.  
 11 Q. Was anybody placed in handcuffs besides  
 12 Morandi? Well, I don't think you told us specifically.  
 13 Was Morandi placed in handcuffs when you were still  
 14 there?  
 15 A. I don't -- I don't recall him being placed in  
 16 handcuffs.  
 17 Q. Does that mean he was not?  
 18 A. That doesn't mean he wasn't, but I don't know.  
 19 Q. You don't remember either way?  
 20 A. I don't remember. I think we left it up to  
 21 Cook County what they wanted to do.  
 22 Q. Was the investigation still ongoing when you  
 23 left?  
 24 A. I don't recall.

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1 Q. What did you do next after you left?  
 2 A. I don't remember.  
 3 Q. When's the next time you had anything to do  
 4 with this incident?  
 5 A. When I went to trial.  
 6 Q. Did you have any contact with any State's  
 7 attorneys prior to you going to trial to testify in  
 8 relation to this incident?  
 9 A. I believe so, yes.  
 10 Q. Were you subpoenaed?  
 11 A. I was summoned or subpoenaed.  
 12 Q. And when you say you had contact with the  
 13 State's attorneys, was that -- did you go to regular  
 14 court appearances or did you just show up the one time  
 15 when it was time to testify?  
 16 A. I don't remember how many times I went for it,  
 17 but any contact with the State's attorney would have  
 18 mainly been to prep for the incident -- for the trial.  
 19 Q. Which courthouse was the trial at?  
 20 A. Markham.  
 21 Q. Have we exhausted your memory of what you  
 22 observed of Marlo McDowell?  
 23 A. Yes.  
 24 Q. And what Marlo McDowell was doing or saying?

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1 A. Yes.

2 Q. Anything that might help refresh your memory

3 on those topics?

4 A. No.

5 Q. Have we now exhausted your memory of your

6 observations of Stephen Morandi?

7 A. Yes.

8 Q. And what he was doing?

9 A. Yes.

10 Q. And where he was located at various points in

11 time?

12 A. Yes.

13 Q. Anything that might help refresh your memory

14 on those topics?

15 A. No.

16 Q. Have we exhausted your memory with respect to

17 all the other people that you saw in the parking lot

18 that were involved in this fight?

19 A. Yes.

20 Q. And what they were doing or saying?

21 A. Yes.

22 Q. Anything that might help refresh your memory

23 on those topics?

24 A. No.

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1 Q. Have we exhausted your memory with respect to

2 this black female what was in the parking lot?

3 A. Yes.

4 Q. And what she was saying or doing in your

5 presence?

6 A. Yes.

7 Q. Anything that might help refresh your memory

8 on those topics?

9 A. No.

10 Q. Have we now completely exhausted your memory

11 with respect to this incident?

12 MR. MATHEWS: I object to the overbroad nature of

13 the question.

14 BY MR. FOURTRIS:

15 Q. You can still answer.

16 A. I take my attorney's advice.

17 Q. What does that mean?

18 MR. MATHEWS: You can answer the question.

19 THE WITNESS: Are you objecting to it?

20 MR. MATHEWS: That was just a lawyer.

21 THE WITNESS: Oh, okay.

22 BY MR. FOURTRIS:

23 Q. In other words, have you told us everything

24 you remember happening at the scene of the incident?

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1 A. Yes.

2 Q. And do you think there's anything else that

3 might help you remember anything in addition to what

4 you've told us today?

5 A. No.

6 MR. FOURTRIS: Okay. Greg, do you have anything?

7 MR. MATHEWS: No questions.

8 MR. FOURTRIS: Reserve or waive?

9 MR. MATHEWS: Waive.

10 (Witness excused.)

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1 UNITED STATES OF AMERICA )

2 NORTHERN DISTRICT OF ILLINOIS ) SS

3 EASTERN DIVISION )

4 STATE OF ILLINOIS )

5 COUNTY OF COOK )

6

7 I, Kathy J Szotek, Certified Shorthand

8 Reporter and Notary Public, do hereby certify that

9 MICHAEL ERASMO RODRIGUEZ was first duly sworn by me to

10 testify to the whole truth and that the above deposition

11 was reported stenographically by me and reduced to

12 typewriting under my personal direction.

13 I further certify that the said deposition was

14 taken at the time and place specified and that the

15 taking of said deposition commenced on March 4, 2013, at

16 1 19 p.m

17 I further certify that I am not a relative or

18 employee or attorney or counsel of any of the parties,

19 nor a relative or employee of such attorney or counsel,

20 nor financially interested directly or indirectly in

21 this action

22

23

24

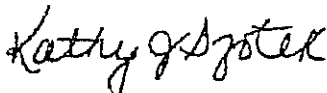


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1 In witness whereof, I have hereunto set my  
2 hand and affixed my seal of office at Chicago, Illinois,  
3 this 25th day of July, A.D. , 2013.

4  
5  
6  
7  
8   
9

10 KATHY J. SZOTEK, CSR  
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